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 Complainant DOUG GRAY
 CONSTRUCTION & DRYWALL, INC. dba
 GRAY CONSTRUCTION

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION

In re

JAMES L. MACKLIN,

Debtor.

DOUG GRAY CONSTRUCTION & DRYWALL,
 INC. dba GRAY CONSTRUCTION,

Movant,

v.

JAMES L. MACKLIN,

Respondent.

Case No. 10-44610-E-7

FEH-002

Chapter: 7 (Converted from Ch. 13)

**MOTION FOR MODIFICATION OF
 DISCHARGE INJUNCTION**

Date: February 3, 2011

Time: 10:30 a.m.

Department: E

Courtroom: 33

Judge: Ronald H. Sargis

COMES NOW Plaintiff/Cross-Defendant/Cross-Complainant DOUG GRAY
 CONSTRUCTION & DRYWALL, INC. dba GRAY CONSTRUCTION ("GRAY CONSTRUCTION")
 and presents the following memorandum of points and authorities in support of its motion for
 modification of the discharge injunction for the limited purpose of pursuing JAMES L. MACKLIN's
 ("DEBTOR") related insurance policy.

GRAY CONSTRUCTION hereby moves this Court for a modification of the discharge
 injunction pursuant to 11 U.S.C. § 524(e). This motion seeks a modification of the discharge

1 injunction for the limited purpose of proceeding in *DOUG GRAY CONSTRUCTION & DRYWALL,*
2 *INC. dba GRAY CONSTRUCTION v. RANDALL O. JUNGERS, et al.*, Case No. S-CV-0024703,
3 Placer County Superior Court, State of California (the "STATE ACTION"), a California state court
4 action, against any applicable insurance policies the DEBTOR may have had in effect while
5 performing work on the property which is the subject of the STATE ACTION. GRAY
6 CONSTRUCTION does not seek to establish DEBTOR's liability in the STATE ACTION for the
7 purpose of taking any action against any personal or real property of the DEBTOR or his estate.
8 GRAY CONSTRUCTION solely seeks potential recovery from any applicable insurance policies.

9 This motion is brought pursuant to 11 U.S.C. section 362(d)(1) for cause, and in support
10 thereof, GRAY CONSTRUCTION submits:

- 11 1. GRAY CONSTRUCTION filed the STATE ACTION against DEBTOR on July 21,
12 2010.
- 13 2. Cross-Complainants in the STATE ACTION allege construction defects related to
14 DEBTOR's work on the property which is the subject of the STATE ACTION.
- 15 3. DEBTOR filed a Chapter 13 petition on September 16, 2010.
- 16 4. DEBTOR filed an answer in the STATE ACTION on September 23, 2010.
- 17 5. The Chapter 13 petition was converted to a Chapter 7 petition on October 6, 2010.
- 18 6. As a result of the Chapter 7 petition, the STATE ACTION has been stayed as to the
19 DEBTOR pursuant to 11 U.S.C. section 362.
- 20 7. Counsel for DEBTOR and GRAY CONSTRUCTION have stipulated to the automatic
21 stay being lifted for the purpose of allowing GRAY CONSTRUCTION to pursue the
22 proceeds of DEBTOR's applicable insurance policies for work performed at the
23 Property.
- 24 8. On December 24, 2010, DEBTOR filed a Notice of Filing Report of No Distribution,
25 Combined with Order Fixing Deadline to Object Thereto.

26 The motion is based on this Motion, the Memorandum of Points and Authorities, and the
27 Declaration of Jeffrey R. Windsor and attached exhibits thereto.

28 In the event neither the DEBTOR nor the DEBTOR's counsel or any interested party appear

1 at the hearing of this motion, the Court may modify the discharge injunction, allowing GRAY
2 CONSTRUCTION to proceed against DEBTOR in the STATE ACTION for the sole purpose of
3 seeking potential recovery from any applicable insurance policies.
4

5 Dated: January 3, 2011

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7 By: _____

Jeffrey B. Windsor
Attorneys for Plaintiff/Cross-Defendant/
Cross-Complainant DOUG GRAY
CONSTRUCTION & DRYWALL, INC.
dba GRAY CONSTRUCTION
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